



The Association of Directors of Public Health

12th February 2016

LGPS Reform
Department for Communities and Local Government
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Revoking and replacing the Local Government Pension Scheme (Management and Investment of Funds) Regulations 2009: consultation

We are responding to the consultation on revoking and replacing the LGPS Regulations 2009, in relation to the UK's international commitments under treaty obligations, particularly the World Health Organisation Framework on Tobacco Control (WHO FCTC).

The Principle set out at paragraph 3.40 of the document 'Local Government Pension Scheme: Investment Reform Criteria and Guidance' states that investment policies of LGPS funds shall not be used to give effect to 'municipal foreign or munitions policies other than where formal legal sanctions, embargoes and restrictions have been put in place by government.'

LGPS funds persistently pursue investment policies that conflict with settled UK public policy, as expressed in the WHO FCTC. The WHO FCTC has an objective to allow the international community to 'protect present and future generations from the devastating health, social, environment and economic consequences of tobacco'. Therefore the UK has an international commitment to 'continually and substantially' reduce smoking prevalence.

Treaties and their associated Guidelines may place requirements on the Parties to the treaty, and these requirements can extend to include local authorities. Article 5.3 Guidelines recommend that no branch of government (including local government) should have any financial interest or investment in the tobacco industry.

In order to comply with the UK's international health commitments under the WHO FCTC, LGPS funds should implement tobacco free investment mandates.

As the WHO FCTC has been adopted by the EU, it is expected that public authorities in the UK have a duty to comply with it. Domestic legislation is not required in such situations. Although the Guidelines may not be binding, they are likely to be taken into account when a court decides whether Parties are in compliance with the Treaty. This was recently stated in a legal opinion commissioned by the Trading Standards Institute from Richard Roberts QC.



The UK has seen substantial investment into smoking cessation, particularly by the NHS. The government has also invested heavily in mass media campaigns. Smoking rates in the UK are declining. The English National Tobacco Control Plan aims to reduce the number of smokers in the UK by 210,000 per annum. This is in line with the WHO FCTC commitment. Although tobacco control has been strongly supported within Parliament, it needs to be consistently applied across all sectors of government, including the LGPS.

Excluding tobacco from all LGPS investments may lead to disagreement and debate, specifically regarding other industries which may be 'undesirable' by various groups. However, the UK has a duty to comply with only one other treaty that is relevant here: the Convention on Cluster Munitions. In a Consultation Paper (CP215, 2013) the Law Commission commented: 'trustees should not invest in activities which are illegal. Nor do we think that trustees should invest in activities which contravene international conventions. For example, trustees should not invest in firms manufacturing cluster bombs, banned by the Convention on Cluster Munitions'. The Local Authority Pension fund supported this. However, when challenged, the Law Commission agreed that investing in foreign companies producing cluster munitions in the UK was not illegal, therefore annulling their previous statement. However, in this situation, domestic law is out of step with the UK's international commitments. Several EU countries have banned investments of this type in domestic law.

Precedent for implementing tobacco free investment in order to comply with international commitments under the treaty and guidelines exists in New Zealand, Norway and Australia. The government controlled Sovereign Wealth Funds of these countries have removed any holdings that they previously had in tobacco manufacturers.

If the UK is to commit to the WHO FCTC, LGPS funds should not be invested in tobacco manufacturers. Any guidance should explicitly require the LGPS and British Wealth Funds to comply with the UK's international treaty commitments. This would also allow the UK to act as a global leader in implementing and abiding by a comprehensive and consistent tobacco policy.

Yours sincerely,

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